Blood Quantum and the White Gatekeeping of Native American Identity

Apr 2021

by Maya Harmon

[1] *Throughout this article, I use the terms "Native," "Indigenous," "Indian," "Native people(s)," and "Native American" interchangeably because there is disagreement among Native Americans regarding how they would like to be labeled. When I'm referring to a specific tribe, I refer to the tribe by its name. For more discussion about the complexity of labels, see What We Want to Be Called: Indigenous Peoples' Perspectives on Racial and Ethnic Identity Labels.*

[2] *I have put references to type or amount of blood in quotation marks because they denote social constructs, not biological realities.*

[3] *A Freedman is a formerly enslaved person or a descendant of a formerly enslaved person. Indian Freedmen or their ancestors were formerly enslaved by Indian tribes.*

[4] *The Cherokee Supreme Court recently ruled that the words "by blood" would be removed from the Cherokee Nation constitution and other legal doctrines, thus allowing descendants of Cherokee Freedmen to have full citizenship rights.*

From the time that European colonists set foot on American shores and made contact with Native peoples, they have sought to control the land and resources that first belonged to the tribes. One means of control was defining what it meant to be an "Indian." The dominant White society in the United States has changed and manipulated legal and sociological constructions of race to further its goals: to acquire more land, preserve the institution of slavery, prevent certain groups of people from becoming citizens, maintain the White race, and more.

The definitions of "Indian" are inconsistent because the government is constantly reshaping those definitions in order to fit its aims. In 1978, a congressional survey found thirty-three separate definitions of "Indians" in various pieces of federal legislation. Most of these definitions specified a particular level of blood quantum, which is the amount of "Indian blood" a person has. Others required reservation residency, ownership of land kept in a government trust, or tribal citizenship for federal recognition. Other laws did not provide any definition of "Indian" identity, leaving it up to the courts to decide.

Throughout history, blood quantum was used to define a point at which responsibilities to tribes, entitlement programs, treaty rights, and reservations would end. The government hoped that using blood quantum would eventually eliminate Native peoples—that intermarriage would "dilute" the amount of "Indian blood" in the population, causing descendants of Native peoples to become indistinguishable from the rest of the population.

During the Treaty Period—the time from 1817–1871 when the United States had a policy of negotiating treaties with tribes as sovereign political entities—federal officials used the language of blood to describe Native American ancestry, specifically those who were mixed with non-Native ancestry. Federal officials used blood quantum to decide who was entitled to specific property or benefits. Using blood quantum allowed the government to turn independent nations into racialized groups, which thus enabled the government to subordinate them.

Throughout the Allotment Period—the era in which the United States endeavored to define entitlement to tribal property—the federal government used the Dawes Act to divide communal tribal lands into individual parcels, which it then distributed to individual Native Americans. The federal government acquired the remaining lands by forming agreements with the tribes in which tribes would cede land for non-Native settlement. The government's goal was to break up tribes by encouraging individual family farming. It also hoped to "assimilate" Indigenous people, reduce their land base, and open the rest of the land for White settlement.

In 1912, Congress conditioned funding and membership for some tribes on blood quantum, limiting its obligations to only those tribes and individuals it deemed to have enough "Indigenous blood." The federal government used blood quantum to deny some mixed-race Native Americans land during this time by requiring at least one-quarter "Native blood" to receive allotments. Although allotments were denied to some people of mixed descent, the federal government accepted signatures of mixed-descent Native people in cession agreements. Decades later, Congress and the Bureau of Indian Affairs (BIA) began to use blood quantum to release mixed-race Native people of certain blood quantum from restrictions on sales and taxation of their allotments—meaning their land could then be sold to White people and subject to taxation.

The government decided who would and would not receive land allotments by referencing the Dawes Rolls, the original lists of Native Americans compiled by the U.S. government. However, the Dawes Rolls commissioners only enrolled a small fraction of Native Americans. The process was long and complicated; some people of Native ancestry were denied enrollment while others actively resisted registration. Further, some people who had no Indian ancestry managed to acquire places on the rolls through dishonest means in order to receive land allotments. The Dawes Rolls also separated those with "true Indian blood" from Black Indians, or Freedmen, even though many Freedmen were also Indigenous. For purposes of land allotment, the government wanted fewer people to count as Native American because it wanted to keep the majority of land to itself.

However, when it came to questions of citizenship, the courts were quick to categorize mixed Native Americans as Indian. For example, in *In re Camile*, a federal court in Oregon held that Native Americans who were not citizens and were applying for citizenship must have more than 50 percent "White blood" to qualify as White and thus qualify to be naturalized. In *In re Cruz*, a Native American who had one-fourth "African blood" applied for citizenship on the basis of his part-African ancestry, but a New York federal court ruled that he was not Black and thus was not entitled to citizenship.

Before the arrival of Europeans, many Indigenous tribes used lineal descent and defined Native identity through social-cultural-territorial definitions. Native tribes also generally accepted mixed-race individuals into Native societies with few hesitations. In some tribes, people could gain tribal

citizenship if they were born in, married or were adopted into, or had long-term residence within the tribal community, or if they assumed cultural norms such as religion and language. Colonization caused a shift to legal and race-based definitions.

Today, the BIA primarily uses the Certificate of Degree of Indian Blood (CDIB) to determine enrollment in tribes and eligibility for federal social services. Many Native tribes adopted the same criteria used by the federal government, leading the majority of tribes to have a blood quantum requirement. Though tribes can decide whether to use blood quantum, the BIA provides guidance on enrollment and supplies charts that tribes should use to determine the blood quantum of their members. The BIA must also approve of tribes' methods for determining enrollment. Modern definitions of indigeneity within tribes closely mirror the nineteenth and early twentieth century European-American conceptions of race. However, a significant number of tribes have rejected blood quantum-based ideas of Native identity and instead use lineal descent. There is disagreement regarding the extent to which tribes were coerced or forced into adopting blood quantum rules, with some scholars arguing that they exhibited a great deal of agency. I would argue that in this regard, tribes were influenced by European-Americans to at least some degree.

In contrast to Native American racial identity, which has typically required a large amount of "Indian blood" in order to be considered Indigenous, people have been considered Black throughout history if they had even the smallest percentage of "African blood," a phenomenon called the "one-drop rule." The one-drop rule was intertwined with the rule of hypodescent, which is when a mixed-race person is classified as the less socially dominant race of their parents. Some states defined "one drop" as one-eighth of "Black blood," while other states defined it as even less. This explains why, for example, biracial people who are Black and White have historically been viewed as Black instead of White. If someone was Black and Native American, they were Black (unless they were seeking U.S. citizenship), no matter how much "Native American blood" they had. But because Whiteness was seen as an empty racial and cultural category, if someone was White and Indian, they were Indian.

In part due to the influence of European-Americans, some Native American tribes, such as the Cherokee and Seminole, have sought to exclude Freedmen and/or Black Native people from tribal citizenship and benefits. Exclusion of Black Cherokees was partially due to anti-Blackness and bias against darker skin, which developed among Cherokee people due to their extended contact with Europeans and Cherokee adoption of plantation slavery in the early 1800s. The federal government also often recategorized Black Cherokees as Freedmen just because they looked phenotypically Black, even if they had originally been on the blood roles. Many Freedmen did, in fact, have Cherokee ancestry, but because they or their ancestors were enslaved, they lacked the documentation to prove it.

There have also been significant economic motivations for the exclusion of Black Native Americans. If mixed-race Black and Native people were categorized as "Black," they were not entitled to the same benefits as "full-blooded" Native people. The economic implications of this categorization were on display in the 1990s, for example, when the federal government decided to pay the Seminole tribe for land the government seized in 1823. The Seminole Nation created a usage plan that said only Seminoles descended from members of the Nation as it existed in 1823

were eligible for the funds. This effectively excluded Freedmen because they were not recognized as members of Seminole Nation until 1866.

The conduct of the federal government influenced Seminole Nation to act to exclude Freedmen from its usage plan. Since the U.S. government was giving the Seminole Nation a limited amount of money for the seized land, the Nation naturally wanted to limit the number of people who received funds. Similarly, tribes that have land tend to be more exclusive than tribes that do not. This is because if they let too many people enroll, they risk losing federal recognition and tribal property. The Freedmen alleged that Seminole Nation's decision was partly due to a recommendation from the BIA to the Nation that only "blood Seminole[s]" should be eligible.

Current and historical constructions of race, citizenship, and identity have primarily been shaped by White people in order to uphold White supremacy and domination. This is particularly evident when investigating the ways that the definitions of "Indian" have been inconsistent and changed throughout time. Whether by requiring a higher blood quantum for federal recognition and benefits, denying Indigenous people U.S. citizenship, or influencing tribes to adopt their own blood quantum requirements, White people have been the gatekeepers of Native American identity.

END | April 2021